



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2020-0035]

RIN 1625-AA08

Special Local Regulation; East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending an existing special local regulation for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sail boat race. This regulation would prohibit persons and vessels from entering the special local regulation unless authorized by the Captain of the Port Sector Southeastern New England or a designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: If you have questions about this amended regulation, call or email LT Benjamin Aaronson, Waterways Management Division, U.S. Coast Guard; telephone (401) 435-2355, email D01-SMB-SectorSENE-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Southeastern New England
DHS	Department of Homeland Security
FR	Federal Register

II. Background Information and Regulatory History

The Captain of the Port Sector Southeast New England (COTP) is amending an existing special local regulation found in 33 CFR 100.119 for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sail boat race requiring a limited access area restricting vessel traffic for safety purposes.

On March 9, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; East Passage, Narragansett Bay, RI (85 FR 13595). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended April 8, 2020, two comments were recieved.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. Based on the nature of this sailboat race, large numbers of participants and spectators, and event locations, the COTP has determined that the potential hazards associated with the event listed in this rule could pose a risk to participants or waterways users if the normal vessel traffic were to interfere with the events. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the regulated area. This purpose of this rule is to ensure the safety of all waterway users, including event participants, spectators, and vessels during this scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on the NPRM published March 9, 2020 that were not relevant to this rulemaking. Both of these comments were submitted

anonymously and unrelated to this rulemaking. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The last longitudinal coordinate of 072°22'83" W was changed to 071°22'83" W in the first regulated area due to a typing error.

This rule amends a special local regulation found in 33 CFR 100.119 currently reads as follows:

Regulated area. The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

Latitude	Longitude
41°27'51" N	071°22'14" W
41°27'24" N	071°21'57" W
41°27'09" N	071°22'39" W
41°27'36" N	072°22'55" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26'04" N	071°22'16" W
41°25'36" N	071°21'58" W
41°25'45" N	071°22'40" W
41°25'49" N	071°22'56" W

The amended regulation would be to expand the size of the first regulated area and to adjust the latitude and longitude of the second regulated area to encompass a new potential starting line for the race to accommodate for ideal weather parameters. The special local regulation would cover all navigable waters from an area just south of Rose

Island expanding just past Castle Hill, RI, and also an area near Brenton Point. The amended location of the special local regulation is as follows:

Latitude	Longitude
41°29'13" N	071°20'07" W
41°29'41" N	071°20'87" W
41°27'27" N	071°22'00" W
41°27'45" N	071°22'83" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26'06" N	071°22'27" W
41°25'60" N	071°21'97" W
41°25'36" N	071°22'65" W
41°25'82" N	071°22'93" W

The starting line will take place within one of the amended regulated areas and will be decided prior to the race pending current weather conditions. The starting line box will be the restricted part of the waterway within the regulated area and that exact location will be broadcasted prior to the race start. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled sail boat race. No vessel or person is permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or by phone at 508-457-3211. Persons and vessels permitted to enter this special local regulation must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the

public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule. The regulatory text we are amending appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time-of-day of the special local regulation. We expect the adverse economic impact to this area to be minimal. Although this regulation may have adverse impact on the impact, the potential impact will be minimized for the following reasons: the special local regulation will be in effect for a maximum of 6 hours during the day of the event; vessels will only be restricted from the area in the East Passage of the Narragansett Bay during those limited periods when the races are actually on going; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by this special local regulation. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners (BNMs) via VHF-FM marine channel 16 about the area, and the rule would allow vessels to seek

permission to enter the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this amended rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section IV.A above, this amended rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This amended rule involves a special local regulation lasting approximately 6 hours that would prohibit entry within the regulated area. Such actions are categorically excluded from further review under paragraph L 61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041.

2. Revise § 100.119 to read as follows:

§ 100.119 Special Local Regulation; East Passage, Narragansett Bay, RI.

(a) *Regulated area.* (1) The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

Latitude	Longitude
41°29'13" N	071°20'07" W
41°29'41" N	071°20'87" W
41°27'27" N	071°22'00" W
41°27'45" N	071°22'83" W

(2) In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26'06" N	071°22'27" W
41°25'60" N	071°21'97" W
41°25'36" N	071°22'65" W
41°25'82" N	071°22'93" W

(b) *Effective period.* This special local regulation is in effect biennially on a date and times published in the Local Notice to Mariners.

(c) *Special local regulations.* (1) Entry into this area is prohibited unless authorized by the Captain of the Port Sector Southeastern New England (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Southeastern New England.

(2) Persons or vessels seeking to enter the regulated area must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 508-457-3211.

(3) Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through local notice to mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: April 14, 2021

C. J. Glander,

Captain, U.S. Coast Guard,

Captain of the Port Sector Southeastern New England.

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